



August 1, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-3351

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150129.

The El Paso Police Department (the "department") received a request for reports held by the department listing the requestor as a "subject or suspect" for the period January 1, 2001 to the present. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note that the request as written implicates the doctrine of common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The submitted documents constitute the department's compilation of the criminal history of the requestor. However, the requestor has a special right of access to information implicating his privacy interest. See Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy).

Accordingly, the department may not withhold the requested information under common law privacy as provided by *Reporters Committee*.

We will next address your arguments under section 552.108. Section 552.108 excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). In this instance, you state that the records in Exhibit C relate to a closed case file which did not result in conviction or deferred adjudication. You state that the records in Exhibit D relate to a criminal investigation that is inactive, but pending, as the department awaits additional contact from the complainant before proceeding further. You also argue that "when a suspect in a criminal investigation has no specific knowledge of the investigation and has not been contacted by the [department] as part of that investigation, he has no right to require that the [department] provided [sic] him with copies of the reports that would identify him as the target of an investigation or compliant [sic]." You therefore appear to argue that any information responsive to this request should be withheld from the requestor in its entirety, as "there are times when a police department needs to covertly conduct its investigations without the knowledge of the targeted suspect."

Based on your representation and our review of the submitted information, we conclude that you may withhold most of the requested information in Exhibit D pursuant to section 552.108(a)(1) of the Government Code. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Most of the information in Exhibit C may be withheld under section 552.108(a)(2).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, you must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Pursuant to section 552.108(c) the identity of a crime victim or complainant is not excepted from disclosure under section 552.108. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision

No. 127 at 3-4 (1976). But in this instance, you seek to withhold the complainants' identities as well as other "front page" information.

As a general rule, common law privacy does not protect the identity of a crime victim. *See* Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common law privacy only upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In addition, in Open Records Decision Nos. 628 (1994), this office found that the names of victims of crime generally do not implicate the victim's privacy interests, but that "section 552.108 of the Government Code may in some circumstances except from disclosure the identity of a juvenile crime victim if a law enforcement agency can show how its release will unduly interfere with law enforcement." *Id.* at 3.

We have considered your position. However, we do not believe that you have established the presence of special circumstances sufficient to justify the withholding of the complainants' identities or other basic information under section 552.101 and common law privacy, or under section 552.108. Therefore, you must disclose basic information, including the identities of the complainants.

To summarize, we conclude that, with the exception of the basic information described in *Houston Chronicle*, including the identities of the complainants, you may withhold the submitted reports under sections 552.108(a)(1) and 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 150129

Enc. Submitted documents

c: Mr. Abdulnassir Almaghrabi
3809 East Paisano Drive
El Paso, Texas 79905
(w/o enclosures)